**BEFORE THE**

# Federal Communications Commission

**WASHINGTON, D.C. 20054**

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| In the Matter of | ) | |
| | ) | |
| Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets | ) ) ) | MM Docket No. 01-317 |
| | ) | |
| Definition of Radio Markets | ) | MM Docket No. 00-244 |

To: The Commission

## REPLY COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom"), parent company of Infinity Broadcasting Corporation ("Infinity"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby submits its Reply Comments in the above-captioned proceeding. Viacom submitted extensive Comments in this proceeding addressing the major issues raised in the *Notice of Proposed Rule Making* ("*NPRM*"), and provided substantial empirical data demonstrating that the local radio ownership rule should be repealed. None of the other parties to this proceeding has offered arguments or data that undermine the showings Viacom made. Accordingly, these Reply Comments are limited to addressing points raised by two supporters of the local radio ownership rule that actually provide evidence supporting the rule's repeal.

First, Viacom offers some observations concerning the data on minority ownership of radio stations compiled by Kofi Ofori for the Minority Media and Telecommunications Council ("MMTC"). The Ofori report demonstrates that radio ownership consolidation since 1996 has *not* disproportionately affected minorities; rather, the report shows that minority ownership or control of radio stations has *increased* since 1996.

Second, Viacom responds to a complaint from the American Federation of Television and Radio Artists ("AFTRA") about a format change at one of Infinity's radio stations in Chicago. AFTRA's complaint underscores the point made by the Commission in the *NPRM* and by Viacom, the National Association of Broadcasters, and others in their comments – group owners tend not to broadcast duplicative formats, and group ownership therefore enhances format diversity.

## I. **Introduction.**

The Commission has maintained a local radio ownership rule in one form or another for over 60 years based on the hypothesis that the rule is necessary to promote public access to diverse viewpoints. Viacom's Comments demonstrated that this hypothesis is without foundation. The average American suffers not from a lack of access to media outlets, but from news and information overload.[1] Moreover, the typical broadcast radio group owner does not proffer one monolithic viewpoint across all commonly owned outlets, but for competitive reasons, airs a wide range of viewpoints and programming.[2]

Notwithstanding the existence of this overwhelming data, several commenters, clinging to out-dated shibboleths, urge the Commission to retain the local radio ownership rule. But as the Court of Appeals has made clear, the burden of proving the continued necessity of the ownership rules falls squarely upon those supporting

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[1] Comments of Viacom, Inc., MM Docket Nos. 00-244, 01-317 at 21-28.

[2] *Id.* at 65-67.

continued regulation. *Fox Television Stations, Inc. v. FCC,* 280 F.3d 1027 (D.C. Cir. 2002). Those commenters supporting retention of the local radio ownership rule have failed to meet their burden. In fact, their comments contain no empirical evidence that the rule continues to be necessary in the public interest.

To the extent that commenters supporting retention of the rule have provided data, the data merely show that consolidation has occurred, but not that consolidation has had any adverse impact on the listening public.[3] In contrast, the empirical evidence submitted by Viacom and other commenters demonstrates that, notwithstanding consolidation, Americans have access to virtually countless sources of news and information, and that consolidation has led to greater format diversity.[4] Accordingly, the local radio ownership rule is no longer necessary in the public interest. It is obsolete, unjustifiable, and it should be repealed pursuant to the mandate of Section 202(h) of the Telecommunications Act of 1996 ("1996 Act").

## II. The Ofori Report Submitted By MMTC Demonstrates That Minority Ownership Has Flourished With Increased Consolidation.

MMTC's Comments include a study by Kofi A. Ofori on minority ownership of broadcast radio stations.[5] The purpose of the study was to "analyze and

[3] *See, e.g.*, Local Radio Ownership and Concentration Study, Comments of the Office of Communication, Inc. of the United Church of Christ, MM Docket Nos. 00-244, 01-317 at Attachment 1; Kofi A. Ofori, *Radio Local Market Consolidation & Minority Ownership*, Comments of Minority Media and Telecommunications Council, MM Docket Nos. 00-244, 01-317 at Appendix 1.

[4] *See, e.g.*, Comments of Viacom, Inc., MM Docket Nos. 00-244, 01-317; Comments of West Virginia Radio Corp., MM Docket Nos. 00-244, 01-317 at Appendix 1,2; Comments of Clear Channel Communications, Inc., MM Docket Nos. 00-244, 01-317 at 16-17, Exhibit 4, 5; Comments of Hispanic Broadcasting Corp., MM Docket Nos. 00-244, 01-317 at 3; Comments of Radio One, Inc., MM Docket Nos. 00-244, 01-317 at 13-15.

[5] Kofi A. Ofori, *Radio Local Market Consolidation & Minority Ownership*, Comments of Minority Media and Telecommunications Council, MM Docket Nos. 00-244, 01-317 at Appendix 1.

discuss the relationship between ownership consolidation and the competitive ability of minority radio broadcasters."[6] Although not emphasized by MMTC, Mr. Ofori's data indicate that consolidation has had a favorable impact on minority ownership.

For example, Mr. Ofori reports that the total number of minority-owned or controlled stations has surged since the local radio ownership rule was relaxed in 1996. Specifically, his report shows that the number of minority-owned or controlled stations has increased *more than 50%* since 1997, from 367 minority-owned or controlled stations in 1997 to 555 in 2001.[7]

The Ofori report also reflects that consolidation has not had a disproportionate impact on the number of minority owners. Although the overall number of minority owners has decreased somewhat, the level of decline in the number of minority owners is *less* than the decline in the number of owners generally. Since 1996, the number of owners of radio broadcast stations generally has decreased 25%.[8] However, the number of minority owners has decreased only 14%.[9] The number of minority owners thus has decreased 40% less than the number of owners generally. Therefore, consolidation has not had a disproportionate impact on minority ownership.

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[6] *Id.* at Appendix 1, page 1.

[7] *Id.* at 3, 10 (the latter figure is derived by adding the number of stations owned by minority-controlled public companies – 156 – to the number of stations that are wholly minority-owned – 399).

[8] *Id.* at 11 n.41 (citing Federal Communications Commission, *Review of the Radio Industry 2001* at 1).

[9] *Id.* at 11.

## III. AFTRA's Complaint About Infinity's Format Change In Chicago Underscores That Group Owners Tend Not To Broadcast Duplicative Formats.

In its Comments, AFTRA complains that Infinity changed the format of one of its Chicago stations, WMAQ(AM) (now WSCR(AM)), from all news to sports/talk. AFTRA's description of the history behind this format change is incomplete and misleading. Its comments describe Infinity's action as "killing"[10] WMAQ(AM), the all-news station, when what actually occurred was simply a change in programming to better meet the needs of listeners – an occurrence that is not only common, but serves the public interest. Viacom takes this opportunity to set the record straight regarding the format change involving the former WMAQ(AM).

Contrary to the implication in AFTRA's Comments, the format change described indicates the soundness of the Commission's theory that a multiple station owner has an "incentive to air more diverse programming to appeal to all substantial interests,"[11] as well as the accuracy of the point Viacom and other commenters made that a group owner is inclined to provide diverse programming to its community rather than duplicate formats in the market.[12]

In 2001, Infinity sold the license for 1160 kHz (then known as WSCR) to Salem Communications Corporation in order to come into compliance with the radio-television cross-ownership rule. *See Shareholders of CBS Corp.*, 15 FCC Rcd 8230, 8243 (2000). In anticipation of the sale, Infinity moved the WSCR(AM) call sign and

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[10] Comments of AFTRA, MM Docket Nos. 00-244, 01-317 at 7.

[11] *NPRM* at ¶ 37.

[12] Comments of Viacom Inc., MM Docket Nos. 00-244, 01-317 at 65.

sports/talk format to 670 kHz, then known as WMAQ, which at that time broadcast an all-news format, as did Infinity's WBBM(AM), 780 kHz. In other words, required to divest stations to comply with the Commission's multiple ownership rules, Infinity did so in a manner that preserved distinct formats and eliminated an otherwise duplicative all-news format.

Contrary to AFTRA's contention, Infinity's decisions concerning the programming aired on 670 kHz did not result in the elimination of a station, but only a change in the station's format to address the desires of the community. Rather than limiting diversity, as AFTRA contends, this format change has added to the diversity of programming available to the Chicago community.[13] Also contrary to AFTRA's contentions, the format change involving WMAQ(AM) and WSCR(AM) did not leave WBBM(AM) as the sole source of news radio in the Chicago market. There are, in fact, at least twelve stations in the Chicago metro area that currently offer at least a partial news format, including news leaders such as WGN and WLS.[14]

In sum, AFTRA's complaint illustrates the thesis of Jerry Hausman, Professor of Economics at the Massachusetts Institute of Technology, whose study was submitted to the Commission by Viacom and others. Professor Hausman conducted an econometric study of the effect of increased consolidation on format variety in 243

[13] The focus of AFTRA's comments makes clear that its core concern relates not to viewpoint diversity, but to the number of on-air reporting jobs available at Infinity stations in the Chicago market, which is a matter not at issue in this proceeding. In addition to taking issue with Viacom's format change in the Chicago market, AFTRA also criticizes Viacom's effort to eliminate an anachronistic provision in Viacom's collective bargaining agreements with AFTRA. Such negotiations are not within the Commission's purview.

[14] BIA Media Access Pro 3.0 (last updated April 2, 2002).

Arbitron markets from 1993 to 2001.[15] He concluded that there exists "a positive and significant relationship between consolidation and format variety."[16] The actual facts underlying AFTRA's comments bear out Professor Hausman's conclusion that greater consolidation brings about greater format diversity.

## IV. Conclusion.

Because this proceeding has not produced empirical data demonstrating that the local radio ownership restrictions remain necessary to serve the public interest, and indeed has produced significant evidence that the rules are no longer necessary as the result of competition, the Commission should repeal the numerical limits on local radio station ownership. Repeal of the rule would promote the public interest and facilitate

[15] Hausman Decl. I at 12-13 (¶ 33-34), Comments of Viacom Inc., MM Docket Nos. 00-244, 01-317 at Appendix C.

[16] Hausman Decl. I at 2 (¶ 7), Comments of Viacom Inc., MM Docket Nos. 00-244, 01-317 at Appendix C.

equal First Amendment and regulatory treatment for radio broadcasters vis à vis other means of delivery of news, information and entertainment to the American public.

**VIACOM INC.**

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May 8, 2002

## CERTIFICATE OF SERVICE

I, Genevieve F. Edmonds, hereby certify that a true and correct copy of the foregoing " Reply Comments of Viacom Inc." was sent by first-class postage prepaid mail this 8th day of May 2002 to the following:

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